

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

MILLIS STOKES,

Plaintiff,

v.

Civil Action No. 3:10cv370

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF CORRECTIONS,

Defendant.

**REPORT AND RECOMMENDATION**

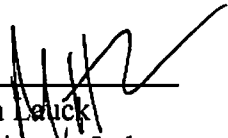
This matter comes before the Court pursuant to 28 U.S.C. § 636(b)(1)(B) for a Report and Recommendation on Defendant Commonwealth of Virginia Department of Corrections's ("VDOC") Motion to Dismiss the Complaint Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) ("Motion to Dismiss"). (Docket No. 6.) Plaintiff Millis Stokes has filed a response (Docket No. 10), and on December 8, 2010, the Court heard oral argument. For the reasons stated from the bench during the December 8, 2010 hearing, the undersigned Magistrate Judge RECOMMENDS that the Court DENY VDOC's Motion to Dismiss WITHOUT PREJUDICE and ORDER NEW BRIEFING. An appropriate Scheduling Order shall follow to address the timing and scope of the new briefing. This new briefing shall supplant any current motions before the Court and must contain a fully self-contained statement of the parties' positions.

The parties are ADVISED that they may file specific written objections to the Report and Recommendation within fourteen (14) days of the date of entry hereof. Each objection should be labeled with the corresponding heading from the Report and Recommendation, should be

numbered, and should identify with specificity the legal or factual deficiencies of the Magistrate Judge's findings. Failure to file specific objections to the Report and Recommendation in a timely manner may preclude further review or appeal from such order. *See Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985).

The Clerk is directed to send a copy of the Report and Recommendation to Plaintiff, to counsel of record, and to the Honorable Robert E. Payne.

And it is so ORDERED.

\_\_\_\_\_/s/   
M. Hannah Lauck  
United States Magistrate Judge

Richmond, Virginia  
Date: 12-10-10